

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL No.824 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 12-04-2004 in W.P.No.17332 of 2003 on the file of the High Court.)

Between:

- 1 Dr. I. Devanand, S/o. I.I. Raju,
R/o. H.No. S4, B-574, N.G.O.'s Colony,

Vanasthalipuram, Hyderabad.

- 2 Dr. Y. Anand Kumar, S/o. Y. Madhava Rao,
R/o. H.No. 5-199, Deeptisrinagar Colony,

Chandanagar, R.R. District.

..... APPELLANT(S)

AND

- 1 The Government of A.P. Medical & Health Department,
Secretariat, Hyderabad. Rep. by its Prl. Secretary

- 2 N.T.R.University of Health Sciences, A.P.,

Vijayawada - 520 000, Rep. by its Registrar

3 B. Sreeramulu, S/o. Mr.B. Pedda Sunkanna,
R/o. Brahmana Kothur, Nandikotkur Mandal,

Kurnool District.

.....RESPONDENT(S)

Counsel for the Appellants: MR.M.SUDHIR KUMAR

Counsel for the Respondent Nos.1 & 2: GP FOR MEDICAL

HEALTH & FAMILY WELFARE

The Court made the following :

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JUDGMENT:(Per Hon'ble Sri Justice B. Sudershan Reddy)

This Writ Appeal arises out of the order, dated

12-04-2004, made in W.P. No.17332 of 2003 by a learned single Judge of this Court whereunder the writ petition filed by the 3rd respondent herein has been allowed declaring the earmarking of the seat in Master of Dental Surgeon(MDS) course for the academic year 2003-04 in favour of the candidates belonging to SC-D category is unsustainable in law.

The learned single Judge accordingly declared the procedure followed by the 2nd respondent-N.T.R. University of Health Sciences, A.P., (for short 'the University') as null and void. Accordingly directions have been issued that the seat has to be filled up from among SC-B category candidates.

Respondents No.3 and 4 in the said writ petition are the appellants.

In order to consider the question as to whether the view taken by the learned single Judge suffers from any infirmities, it is just and necessary to notice few relevant facts.

The 3rd respondent/writ petitioner belongs to SC-B group. He passed M.D.S. course from the Government Dental College & Hospital, Afzalgunj, Hyderabad, in the academic year April, 2002, and completed internship of one year on 26-06-2003. That in response to the notification issued by the University dated 09-06-2003 notifying the schedule of admissions into M.D.S. course in the Government Dental College & Hospital, Hyderabad, for the academic year 2003-04. He applied for the same and acquired 40th rank. The case set up by him is that the University is under obligation to strictly follow the procedure for implementation of “Rule of Reservation” notified in Rule – 3 of A.P. Scheduled Caste (Rationalisation of Reservations) Rules, 2000 (for short ‘the Rules’). The notification issued by the University is not in accordance with the Rules. In terms of the A.P. Scheduled Caste (Rationalisation of Reservations) Act, 2000, (for short ‘the Act’) 1% of the seats are reserved in favour of SC-A, 7% of the seats are reserved in favour of SC-B, 6% of the seats are reserved in favour of SC-C and 1% of the seats are reserved in favour of SC-D from among the 15% seats reserved in favour of the scheduled caste categories. The rotation points allotted to such sub-categories are as follows:

Prescription of category	% of seats available	Rotation points at Sl. Nos.
SC “A”	1	2 nd
SC “B”	7	7 th , 22 nd , 41 st , 62 nd , 72 nd , 87 th & 91 st
SC “D”	1	52 nd

The gravamen of the complaint is that the University with reference to the rotation points issued the impugned notification. The rotation points for 14 seats spread over a period of 7 years among the various categories of scheduled castes are as follows:

Prescription category	% of seats available	Year
SC "A"	4	1 st , 3 rd , 5 th and 7 th
SC "B"	4	1 st , 3 rd , 5 th and 7 th
SC "C"	3	2 nd , 4 th and 6 th
SC "D"	3	2 nd , 4 th and 6 th

That as per the said rotation points 4 seats each are allotted to SC-A and SC-B categories respectively and 3 seats each to SC-C and SC-D categories in a group of 7 years and such an allocation is in contravention of the provisions of the Act and the Rules made thereunder. It was contended that since SC-B candidates are entitled to 7 seats out of 14 seats spread over period of 7 years and SC-C category candidates are entitled to 6 seats. Whereas, SC-A and SC-D category candidates are entitled to 1 seat each. The writ petitioner further contended that earmarking seats in favour of SC-A and SC-D category candidates in a manner entitling them to secure more seats than they are entitled in a group of 7 years as arbitrary and illegal. The sum and substance of the contention was that the candidates belonging to SC-D category who have already been provided a seat in the second year i.e. 2001-02 will not get any seat till 2003-04 and the same should go in favour of SC-B candidate. The University by adopting an erroneous and illegal procedure deprived of seat to which he was entitled to in accordance with law.

The University in its counter affidavit *inter alia* contended that in view of the rationalisation of scheduled caste category candidates into A, B, C & D sub-categories, the roaster as prescribed in the Rules has been followed and according to the same the roaster points will be as follows:-

Sl. No. Roaster Point Sub-Group Year

1 2 SC-A

2 7 SC-B 1st year

3 16 SC-C

4 22 SC-B 2nd year

5 27 SC-C

6 41 SC-B 3rd year

7 47 SC-C

8 52 SC-D 4th year

9 62 SC-B

10 66 SC-C 5th year 11 72 SC-B 12 77 SC-C 6th year

13 87 SC-B 14 91 SC-C 7th year 15 97 SC-B

That if the candidates of a particular group are not available, they will be allotted as per the procedure prescribed in the Rules. For the academic year 2003-04, the selection of the scheduled caste category candidates is required to be done as per the rotation for the 4th year. Even in the roaster as indicated in the Rules is followed for the year 2003-04, the available seats will go in favour of the candidates belonging to SC-C and SC-D categories. The SC-D candidates cannot be deprived of seat in the middle of roaster spread over 7 years.

It was urged on behalf of the respondent/writ petitioner that as per the Rules, the candidates belonging to SC-B category shall get 7 seats out of 14 seats

spread over a period of 7 years, whereas SC-C and SC-D candidates will get only one seat each and the University had adopted an erroneous procedure in earmarking the seats among four categories of scheduled caste and simply allotted in rotation SC-A, SC-B, SC-C and SC-D. In the process candidate belonging to SC-A and SC-D categories were getting each 3 and 2 seats more for which they are not entitled in law. If the reservations are strictly implemented as per the Rules, it was not open for the University to once again reserve the seats in favour of SC-D candidates on the ground that the roster point for the

4th year seat may have to be allotted to SC-D candidates.

On behalf of the University, it was mainly contended that the rights have already been accrued in favour of the candidates belonging to SC-D category, the same cannot be interfered with. The University had already distributed the seats among the candidates belonging to scheduled caste categories spread over to 7 years and the same cannot be distributed in the mid way.

It was contended on behalf of the appellants that for the academic year 2003-04 when two seats were earmarked in favour of the candidates belonging to SC-C and SC-D category, the writ petitioner who admittedly does not come in such category cannot be allowed to question the same in the mid way even earmarking of seats is erroneously made in the year 2001-02. Since the appellants belongs to SC-C and

SC-D category are entitled to get seat as unit is for the year but, even if, the Rules are followed for the 4th year, the seat shall go to the candidates belonging to SC-C and SC-D categories. The learned Judge upon an elaborate consideration of the matter, came to the conclusion that once the candidate

from SC-D category is already accommodated for one seat for which the candidates of that category were entitled to in the year 2001-02, the quota reservation in their favour exhausted and there cannot be any further reservation in their favour. Accordingly earmarking of seats for the academic year 2003-04 in favour of SC-D category were held to be bad.

In this writ appeal Sri M.R.K. Chowdary, learned senior counsel, mainly contended that though the allotment and earmarking of seats in favour of various categories of scheduled caste should in conformity with the roster points indicated under the Rules and, even if, there was any illegality or irregularity in the matter of implementing the rule of reservation, the earmarking done for the academic year 2003-04 cannot be said to be not in conformity with the Rules. The reservations have been rightly implemented for the academic year 2003-04 and with a view to rectify the mistakes committed by the University during the previous year, the appellants cannot be deprived of their allotment in admission under SC-D category for the academic year 2003-04. The earmarking of reserved seats in favour of SC-C and SC-D category candidates at serial No.47 and 52 is in accordance with Rule – 3 of the Rules, so far as the academic year 2003-04 is concerned.

Dr. Y. Padmavathi, learned standing Counsel for the University, submitted that the University having accepted the judgment of the learned Judge implemented the same and followed the principle enunciated in the judgment and therefore the University did not prefer any appeal and is not interested in questioning the correctness of the judgment. The learned standing Counsel further contended that the admissions not only for the academic year 2003-04 but even for 2004-05 have already been completed and any direction at this stage directing the

University to provide seat to the appellants, even if, they are found entitled to, may amount to compelling the University to act contrary to the directions of the Dental Council of India and may ultimately result in the University violating the schedules of admissions.

The learned standing counsel relied upon the decisions of the Supreme Court in ***Medical Council of India v. Madhu Singh & Others; Neelu Arora (Ms) & another v. Union of India & Others; Shafali Nandwani v. State of Haryana & Others***; and ***Paramjeet Gambhir & another v. State of M.P. & Others***.

The Governor of Andhra Pradesh in exercise of the powers conferred by sub Section (1) of Section – 7 of the A.P. Scheduled Castes (Rationalisation of Reservations) Act, 2000, and in supersession of the A.P. Scheduled Castes (Rationalisation of Reservations) Rules, 1999, issued in G.O.Ms. No.116 Social Welfare (CV.1), dated 10-12-1999, made the Rules known as A.P. Scheduled Castes (Rationalisation of Reservations) Rules, 2000. The Rules have come into force with effect from 02-06-2000 when the Rules framed under G.O. Ms. No.47, Social Welfare (CV.1), dated 31-05-2000, were published in the official gazette on 02-06-2000. As per proviso to sub-Rule (1) of Rule–3, 14 seats, which were earmarked for the candidates belonging to scheduled castes have to be distributed among the various groups as per roaster specified in Rule – 22 (e) of the Andhra Pradesh State and Subordinate Service Rules, 1996.

That if such a procedure is followed the candidates belonging to SC-A and SC-D category will get one seat each from that out of 14 seats so reserved and spread over period of 7 years. But the defective procedure adopted by the University, the candidates belonging to SC-A and SC-D category are provided 3

and 2 seats more, respectively, which admittedly is contrary to the provisions of the Act and the Rules. It is no doubt true that the University notified the roster to be followed in 2000-01 and the seats were accordingly distributed among the various categories of scheduled castes from the academic year 2000-01 onwards. As noticed herein above, the said Rules have come into force with effect from 02-06-2000 and the University is under legal obligation to implement the Rules from the academic year 2000-01 onwards. It is under those circumstances, the learned single Judge came to the conclusion that once the candidate belonging to SC-D category accommodated in one seat to which the candidates belonging to that particular category were entitled in the year 2001-02, their quota exhausts and there cannot be any further reservation in their favour.

We find no legal infirmity in the order passed by the learned single Judge. The period of 7 years commenced from the date of publication of the Rules in the official gazette, dated 02-06-2000. That after the commencement of operation of the Rules, there could not have been any further earmarking of seats in favour of SC-D category candidates for the academic year 2003-04. The procedure adopted by the University is totally unsustainable. It is under those circumstances, the learned single Judge issued directions that the seats were to be filled up from among the SC-D category candidates. The candidates belonging to SC-D category are not entitled for any reserved seat for the academic year 2003-04.

However, Sri M.R.K. Chowdary, learned senior counsel, appearing for the appellants contended that the writ petitioner got seat in MDS course in the seat reserved in favour of SC-B category for the academic year 2004-05 and the

unfilled seat for the academic year 2003-04 may be directed to be filled up by the appellants, in which event, it would not cause any prejudice to any of the parties. We are not inclined to issue any such directions for the simple reason that for the academic year 2003-04 no reserved seat in MDS course was available to SC-D category. The reservation was made in favour of SC-D category has been rightly interfered with by the learned single Judge. Any direction from this Court at this stage may result in perpetuation of illegality for which purposes no writ can be issued by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

For the foregoing reasons and in the light of the discussion, it is not necessary to go into the question as to whether this Court can issue any writ directing further admission after the finalisation of the process of admission by the University. However, we have our own reservation with regard to the contention raised by the learned standing Counsel in this regard for the reason that acceptance of the submission may amount to abdication of our jurisdiction to rectify the illegalities and irregularities in the process of selection and admission of candidates into various courses by the University. At any rate, the issue may have to be considered in detail as and when it arises.

For the aforesaid reasons, we find no merit in this appeal and the same shall accordingly stand dismissed. No order as to costs.

Deputy Registrar

// True Copy //

Section Officer.

To

1 The Principal Secretary,

The Government of A.P. Medical & Health Department,
Secretariat, Hyderabad.

2 The Registrar, N.T.R. University of Health Sciences, A.P.,

Vijayawada - 520 000.

3. Two C.Cs. to G.P. for Medical, Health & Family Welfare.(O.U.T.)

4. Two C.D. copies.

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